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20 UNITED STATES DISTRICT COURT

21 NORTHERN DISTRICT OF CALIFORNIA

23 OPERATING ENGINEERS' HEALTH AND
WELFARE TRUST FUND FOR NORTHERN
24 CALIFORNIA, et al.,

25 Plaintiffs,

26 v.

27 BCJ SAND AND ROCK, INC. et al.,

28 Defendants.

Case No. 3:19-cv-00710 AGT

**JOINT REQUEST TO EXTEND
PRETRIAL DEADLINES BY 120 DAYS
DEADLINE; [PROPOSED] ORDER
THEREON**

[AS MODIFIED]

1 Plaintiffs Operating Engineers' Health and Welfare Trust Fund for Northern California et al.
 2 ("Trust Funds"), and Defendants BCJ Sand and Rock, Inc. et al. and Defendant James Slender aka Brad
 3 Slender (collectively the "Parties") respectfully request to extend the pretrial deadlines as set forth in the
 4 Court's Amended Scheduling Order by 120 days. [Dkt. # 76]. Good cause exists for the continuance, as
 5 follows:

6 1. As the Court's records will reflect, the Complaint was filed by Plaintiffs on February 8,
 7 2019. [Dkt. #1]. Defendant BCJ Sand and Rock, Inc. ("BCJ") was served by substitute service on
 8 February 13, 2019, and a Proof of Service of Summons was filed with the Court on April 2, 2019. [Dkt.
 9 # 14]. Defendant BCJ filed an Answer to the Complaint on March 5, 2019. [Dkt. # 10].

10 2. Defendant James Slender *aka* Brad Slender ("Slender") was personally served on
 11 February 8, 2019, and a Proof of Service of Summons was filed with the Court on April 2, 2019. [Dkt. #
 12 15]. Defendant Slender filed an Answer to the Complaint on March 1, 2019. [Dkt. # 9].

13 3. Plaintiffs filed their First Amended Complaint on August 30, 2019, which added Valley
 14 Silica, Darwin Christ and Michael Hickerson as Defendants. [Dkt. #25]. Defendants BCJ, Valley
 15 Silica, Darwin Christ and Michael Hickerson (collectively, "BCJ Defendants") filed an Answer to the
 16 First Amended Complaint on September 25, 2019. [Dkt. # 26]. Defendant Slender filed an answer to the
 17 First Amended Complaint on July 6, 2020. [Dkt. # 64].

18 4. By Stipulation of the Parties, Plaintiffs filed their Second Amended Complaint on
 19 October 1, 2020, which added Norcal Sand and Rock, Inc. ("Norcal") as a Defendant. [Dkt. # 67].

20 5. This action arises under the Employee Retirement Income Security Act of 1974
 21 ("ERISA") out of an alleged breach of a collective bargaining agreement. Plaintiffs contend that
 22 Defendants have failed to and refused to submit contribution reports and payments that are required
 23 under the terms of their Collective Bargaining Agreement(s). Defendants deny these allegations.
 24 Plaintiffs have been in the process of conducting an audit of Defendants' records for the period from
 25 January 1, 2015 through December 31, 2018 ("Initial Audit Period"). Due to the extended period of
 26 time that has elapsed since the initial audit request and the documents being provided, as well as the
 27 change in companies operating the quarry from BCJ to Norcal, Plaintiffs have extended the audit
 28 through the current date. ("Extended Audit Period").

1 6. On September 25, 2020, the Parties stipulated to vacate the mediation deadline, amend
 2 the scheduling order and request referral to a settlement conference with a Magistrate Judge. [Dkt. #65].
 3 The Court granted the stipulation on September 28, 2020. [Dkt. #66].

4 7. After a case management conference with the Court on October 16, 2020, the Court
 5 issued an Amended Scheduling Order. [Dkt. #76].

6 8. Defendant BCJ Sand and Rock, Inc. is currently a suspended corporation and Norcal,
 7 which incorporated in March 2020, has taken over operations at the quarry formerly operated by BCJ as
 8 of June 1, 2020. Defendant BCJ Sand and Rock, Inc. is currently in the process of being revived.
 9 Further discovery will need to be conducted to determine Norcal's relationship to Defendants BCJ and
 10 Valley Silica to resolve the present dispute.

11 9. The Parties have been attempting to informally resolve the dispute. Plaintiffs received
 12 some of the records requested from Defendants' third party payroll service for the Initial Audit Period
 13 and for the Extended Audit Period. Defendants' third party payroll service has advised that it does not
 14 have any of the remaining records requested; Plaintiffs have requested these remaining records from
 15 Defendants. Defendants are working on obtaining the requested records. Plaintiffs have issued
 16 discovery to Defendant Michael Hickerson, Defendant Norcal and Defendant BCJ Sand and Rock. As
 17 Defendant BCJ Sand and Rock remains suspended by the Secretary of State, the BCJ Defendants assert
 18 that they are unable to respond to Plaintiffs discovery. The Parties believe that these documents will be
 19 crucial in narrowing the dispute and bringing this matter to resolution.

20 10. Therefore, the Parties respectfully request that the Court extend the following pretrial
 21 deadlines:

Case Management Schedule

Fact Discovery Cut-Off:	July 10, 2021
Expert Witness Disclosures:	July 10, 2021
Rebuttal Expert Disclosures:	July 24, 2021
Expert Discovery Cut-Off:	September 17, 2021
Deadline for Filing Dispositive Motions:	November 6, 2021
Hearing Date for Dispositive Motions:	November 29 December 10, 2021

1 Pretrial Conference: February 18, 2022

2 Trial: April 8, 2022

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5 DATED: February 8, 2021

**SALTZMAN & JOHNSON LAW
CORPORATION**

6

7 By: /s/ Allan D. Shuldiner

Allan D. Shuldiner
Attorneys for Plaintiffs, Operating Engineers'
Health and Welfare Trust Fund for Northern
California, et al.

8

9 DATED: February 8, 2021

GRIFFITH, HORN & SHEEHAN, LLP

10

11 By: /s/ David R. Griffith

12 David R. Griffith
13 Attorneys for Defendant BCJ SAND AND ROCK,
14 INC., MICHAEL HICKERSON, DARWIN
CHRIST, VALLEY SILICA and NORCAL SAND
AND ROCK, INC.

15 DATED: February 8, 2021

JACOBS, ANDERSON & POTTER, LLP

16

17 By: /s/ Douglas B. Jacobs

18 Douglas B. Jacobs
19 Attorneys for Defendant James Brad Slender

Having reviewed the above request, and good cause appearing, the parties' request to extend the pretrial
dates is approved.

IT IS SO ORDERED.

Dated: February 9, 2021



ALEX G. TSE
United States Magistrate Judge